

*In the Matter of Regina Gann, et al., Assistant Supervisor of Public Works,
(PM0089R), Marlboro Township*
CSC Docket Nos. 2013-3175, 2013-3200, 2013-3254, and 2013-3262
(Civil Service Commission, decided August 15, 2013)

Regina Gann, Thomas Glowacka, Jr., Chester Jameson, and Jason Kaye, appeal the determinations of the Division of Selection Services and Recruitment (Selection Services) which found them ineligible for the promotional examination for Assistant Supervisor of Public Works, (PM0089R), Marlboro Township because they were not permanent in the competitive division as of the closing date.

The subject promotional examination was announced with a closing date of February 21, 2013. The examination was open to employees in the competitive division who had an aggregate of one year of continuous permanent service as of the closing date and were currently serving as a Senior Public Works Repairer or to employees in any competitive title with three years of experience in the construction, maintenance and repair of streets, sewer, water, sanitation or other public works facilities or similar heavy construction. Six employees applied for the subject examination that resulted in a list of one eligible with an expiration date of May 22, 2016.

It is noted that Messrs. Jameson, Kay, Glowacka and Ms. Gann are all permanent in the non-competitive title of Truck Driver and work in the appointing authority's Department of Public Works. Furthermore, all of the appellants were permanent in that position on or before October 20, 2012. Effective that date, the Civil Service Commission (Commission) reallocated the title of Truck Driver from the competitive division of the career service to the non-competitive division in accordance with *N.J.A.C. 4A:3-1.2*. See *In the Matter of Reallocation of State, Local and Common Titles from the Competitive to the Non-Competitive Division of the Career Service*, (CSC, decided October 17, 2012) (*Reallocation, Phase 1*). However, since the subject examination was only open to employees serving in the competitive division, the appellants were deemed ineligible.

On appeal to the Commission, the appellants assert that their current non-competitive status should not provide a basis for finding them ineligible for the subject examination. Specifically, they state that they had achieved permanent status in the title of Truck Driver when it was allocated to the competitive division. Thus, the appellants argue that it would be unfair to deprive them of a promotional opportunity solely on the basis that their title was reallocated to the non-competitive division. Mr. Glowacka notes that should he be found ineligible for the subject position based upon his non-competitive status, his career will be put "at a standstill."

CONCLUSION

Initially, the Commission has been conducting an extensive evaluation of the classification plan in an effort to provide State and local jurisdictions with the flexibility needed to more efficiently and quickly meet their hiring responsibilities. This has resulted in the consolidation of hundreds of titles as well as the reallocation of over 100 titles from the competitive to the non-competitive division. *See N.J.A.C. 4A:3-1.2(4)*. As a result of the reallocation of a title from the competitive to the non-competitive division, it was anticipated that certain regulatory procedures associated with the promotional examination eligibility screening process would need to be addressed. Therefore, each reallocation action contained the following guidance:

Where it is found that an employee's movement from a non-competitive title to a competitive title could have been effectuated via promotional examination procedures before any title reallocation impacting the employee's title, [Selection Services] will announce a promotional examination, regardless of whether or not the movement after the reallocation constitutes a promotional movement. *Similarly, where an employee was previously classified in a competitive title, but, as a result of the title reallocation, is cross-walked into a non-competitive title, Selection Services will process any future promotional movements based on the employee's competitive title before the title reallocation without regard to whether or not the employee's present non-competitive title is approved to promote to a competitive title.* Emphasis added.

The above noted passage was included because the underlying premise of the reallocation and consolidations is to ensure that employees in titles affected by these actions would not be adversely impacted. Stated differently, an individual who was permanent in a competitive title prior to its reallocation to the non-competitive division should not be precluded from competing in any promotional examination on the basis that he or she was not permanent in the competitive division, so long as he or she meets all of the other requirements in the announcement. This is not to say that employees who are appointed to the impacted non-competitive titles *after* the reallocation should be treated the same way, as those individuals would not have an expectation to be eligible for a promotional examination based on prior service when the title was in the competitive division. Therefore, all individuals who attained permanent status in a competitive title prior to its reallocation to the non-competitive division should be deemed to be permanent in a competitive title for promotional examination eligibility purposes only. In the present matter, the appellants were permanent in the competitive division in the title of Truck Driver when the title was reallocated.

Accordingly, the appellants, as well as Donna Rogalsky¹, should be found to have satisfied the permanent status in a competitive title requirement.

Although the appellants are now considered as having the requisite permanent status in a competitive title, they are still required to demonstrate that they meet the experience requirements for the subject title. *N.J.A.C. 4A:4-2.6(a)* provides that applicants shall meet all requirements specified in the promotional examination announcement by the closing date. *N.J.A.C. 4A:4-2.6(c)* provides that applicants for promotional examinations with open competitive requirements may not use experience gained as a result of out-of-title work to satisfy the requirements for admittance to the examination or for credit in the examination process, unless good cause is shown for an exception. *N.J.A.C. 4A:4-2.1(f)* provides that an application may only be amended prior to the announced closing date. *N.J.A.C. 4A:1-1.2(c)* provides that a rule may be relaxed for good cause in a particular circumstance in order to effectuate the purposes of Title 11A, New Jersey Statutes.

In this matter, each of the appellants indicated more than three years of experience in the Truck Driver title as well as additional experience in the Laborer 1 title. Ms. Gann described her experience as a Truck Driver from November 2004 as:

Paving, brush and leaf removal, pot hole repair, basin repair, tree removal (storm related), winter road maintenance (plowing and salting), recycling, field maintenance (including set up and striping), working knowledge of fertilization, and care of municipal properties, including commuter lots and walkways.

Mr. Glowacka, in pertinent part, indicated that his duties as a Truck Driver from July 2003 and as a Laborer 1 from December 1997 included:

I am the senior [T]ruck [D]river and will be the supervisor on that job site which may involve supervising support staff ... Drive truck and operate all equipment. Haul equipment with a trailer and have a Class A License. Tree and brush removal. Trained and have knowledge on all specialized equipment: jet truck, bucket truck, paver, rollers, mowers, garbage truck. Certified on backhoe, loaders and skid steer. Road paving, grating, elevation and maintenance. Snow plowing and removal.

¹ Ms. Rogalsky did not appeal her ineligibility.

Mr. Jameson described his experience as a Truck Driver from March 2001 and as a Laborer 1 from October 1990 to March 2001 as:

Construct athletic fields ... supervise and install drainage systems for buildings, athletic fields, parks, streets, parking lots ... conduct inspections of detention basins and supervise repair ... operate heavy and light equipment (track hoe, backhoe, loaders, bulldozers, grader, roller, paver, Toro 580 mower, Bomford brush mower, and forklift ... repair and replace sewer lines, water lines, storm drains, catch basins .. repair or replace sidewalks.

Mr. Kaye indicated that as a Truck Driver since January 2004 and a Laborer 1 from December 1997 to January 2004, he:

[Hauled] asphalt, stone and dirt on road paving jobs; [operated] vibratory roller to help compact asphalt, stone and dirt on paving jobs; [drove/operated] sewer truck, jetting (cleaning) pipes, and cleaning/removal of [debris] from catch basins; [operated] milling machines, ripping out old roads and preparing for new asphalt; [operated] paving machine [to pave] new asphalt roads; operating track excavator [to dig] trenches to install pipes and catch basins.

In other words, while the appellants indicated duties on their applications that included the driving of a truck, they also specified the performance of various construction, maintenance and repair duties in the area of public works. Under normal circumstances, Selection Services would be quite correct to determine the appellants ineligible for the subject examination since applicable experience gained in the Truck Driver title would be considered out-of-title work. However, experience should be evaluated in the context of the environment in which applicants work. *See In the Matter of Karen Dolan, et al.* (MSB, decided July 19, 2006) (Logical nexus existed between the duties performed by the appellants and those required to establish eligibility for the title under test). Therefore, it is appropriate to consider the potential pool of candidates who could compete for this examination.

As previously noted, five of the six applicants were permanent Truck Drivers as of the announced closing date.² Also, a review of agency records indicates that the Departments of Public Works for the appointing authority consists of employees in the following titles:

² The sixth applicant is a Heavy Equipment Operator.

Titles	Number of Employees in Title
Assistant Supervising Maintenance Repairer	1
Heavy Equipment Operator	2
Keyboarding Clerk 3	2
Laborer 1	13
Maintenance Worker 3 Grounds	1
Mechanic	3
Meter Worker 1	2
Road Repairer 3	1
Senior Mechanic	1
Senior Traffic Maintenance Worker	1
Senior Water Treatment Plant Operator/Senior Water Treatment Plant Repairer	1
Superintendent of Public Works	1
Supervisor Traffic Maintenance	1
Supervisor of Buildings and Grounds	1
Truck Driver	12
Water Meter Reader/Water Meter Repairer	1

Given the number of Truck Drivers in relation to the employees in other titles within the Department of Public Works, it is unlikely that the 12 Truck Drivers only drive a single-axle truck to transport non-hazardous materials, equipment or people while employees in other titles perform the necessary construction, maintenance and repair of various public works facilities. Moreover, the Laborer 1 title has always been in the non-competitive division. Thus, the incumbents in the Laborer 1 title could not compete for the subject examination. Further, the appointing authority does not employ a Senior Public Works Repairer, the only title to which the examination was open without satisfying the experience requirement. Therefore, it is clear that there is a logical nexus between the duties performed by the appellants and those required to establish eligibility for the title under test.

Additionally, the Commission notes that the dual purpose of the Civil Service system is to ensure efficient public service for State and local governments and to provide appointment and advancement opportunities to Civil Service employees based on their merit and abilities. These interests are best served when more, rather than fewer, individuals are presented with employment opportunities. *See Communications Workers of America v. New Jersey Department of Personnel*, 154 N.J. 121 (1998) and Civil Service rules generally favor the filling of vacancies by promotional examination unless it is deemed in the best interest of the career

service to hold an open competitive examination. *See N.J.A.C. 4A:4-2.3(a)*. In this case, the subject list only contains the name of one eligible and admitting the other applicants will provide the appointing authority with a complete list. Accordingly, the Commission finds good cause exists to accept the appellants' and Ms. Rogalsky's out-of-title work and admit them to the subject examination. However, the matter of the appellants and Ms. Rogalsky's classifications should be reviewed by the Division of Classification and Personnel Management (CPM) so that it can determine their appropriate classifications.

ORDER

Therefore, it is ordered that these appeals be granted and the appellant's applications be processed for prospective employment opportunities. It is further ordered that the duties of all appellants' positions be reviewed by the Division of Classification and Personnel Management to determine their proper classification.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.